No. 98-436

In the Supreme Court of the United States

OCTOBER TERM, 1998

JOHN H. ALDEN, ET AL., PETITIONERS

v.

STATE OF MAINE

ON WRIT OF CERTIORARI
TO THE SUPREME JUDICIAL COURT OF MAINE

REPLY BRIEF FOR THE UNITED STATES

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A. The Supremacy Clause Requires A State Court Of Competent Jurisdiction To Hear FLSA Claims Against The State

1. The State does not challenge the holding in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), that Congress has power under the Commerce Clause to require state employers to compensate their employees in accordance with the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* The State contends, however, that Congress may not make that obligation legally enforceable by authorizing employees to file suit in a state court of competent jurisdiction to recover wages that the State has unlawfully withheld. The State makes that argument notwithstanding that its courts entertain suits against private employers under the FLSA and suits for monetary

relief against the State on a variety of claims, including claims for wages withheld in violation of state law.

As we explain in our opening brief (Br. 17-27), the State's contention conflicts with the most basic Supremacy Clause principles. When, as here, Congress has authority to impose a substantive legal obligation, it necessarily has the power to provide for the enforcement of that obligation by providing a cause of action for damages to the individual whose legal rights have been violated. *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U.S. 390, 396-397 (1906) ("There can be no doubt that Congress had power to give an action for damages to an individual who suffers by breach of the law. * * * In other words, if Congress had power to make the acts which led to the damage illegal, it could authorize a recovery for the damage.") (citation omitted). And, under the terms of the Supremacy Clause, state courts of competent jurisdiction are "bound" to enforce the federal cause of action, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, Cl. 2. As this Court has explained, the Supremacy Clause makes federal laws "as much laws in the States as laws passed by the state legislature" and "charges state courts with a coordinate responsibility to enforce that law according to their regular modes of procedure." *Howlett* v. *Rose*, 496 U.S. 356, 367 (1990); see also *Testa* v. *Katt*, 330 U.S. 386, 389-390 (1947).

Fundamental principles in effect at the time the Constitution was adopted and in the early years of the Republic confirm that, when Congress has power to impose a legal obligation, it may also provide for the enforcement of that obligation through a private action by the party whose legal rights have been invaded. For example, Blackstone described it as "a general and indisputable rule, that where there is a legal right,

there is also a legal remedy, by suit or action at law, whenever that right is invaded." 3 William Blackstone, *Commentaries* *23. And in *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 163 (1803), Chief Justice Marshall observed that our Government "has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right."

Nor does it matter that the basis for the Maine courts' refusal to enforce the federal overtime obligation is the State's assertion that it is immune from suits arising under federal law. The Supremacy Clause directive that a state court is "bound" to enforce federal law "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding" applies as much to a State's sovereign immunity law as to any other state law that frustrates the vindication of a federal right. As the Court explained in *Howlett*, "[a] construction of the federal statute which permitted a state immunity defense to have controlling effect would transmute a basic guarantee into an illusory promise; and the supremacy clause of the Constitution insures that the proper construction may be enforced." 496 U.S. at 376-377 (quoting *Martinez* v. *California*, 444 U.S. 277, 284 n.8 (1980)).

Moreover, the Supremacy Clause principle that state courts may not frustrate or discriminate against federal law is fully applicable when a State is the defendant. As the Court stated in *Hilton* v. *South Carolina Public Railways Commission*, 502 U.S. 197, 207 (1991), when "a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court."

2. The State argues (Br. 46-47) that it is not "discriminating" against federal law, because it does not

allow a state employee to sue under state *or* federal law to recover overtime compensation at the rate of one and one-half times the regular rate of pay. But that is just another way of saying that the State has a disagreement with the substance of the concededly valid obligation Congress has imposed on the State to pay overtime compensation. Under this Court's decisions, a State may not refuse to enforce federal law simply because it does not correspond to state law in every detail. A State is required to entertain federal-law claims at least as long as it opens its courts to claims of the same general type. *Howlett*, 496 U.S. at 361, 378, 380; *Testa*, 330 U.S. at 394. Here, the State entertains actions against private employers under the FLSA for overtime compensation at one and one-half times the regular rate of pay, and it entertains suits against the State for monetary relief, including suits seeking wages that have been withheld in violation of state law. See U.S. Br. 24; Alden Br. 35-36. Because those claims unquestionably are of the same general type as the claim asserted by petitioners in this case under any plausible view of such a test, the State's refusal to entertain petitioners' claim "flatly violates the Supremacy Clause." *Howlett*, 496 U.S. at 381.

Indeed, this case illustrates the extent to which, under the State's analysis, a State's assertion of sovereign immunity can be used to discriminate against federal law. Maine law permits state employees to bring an action in Superior Court to recover unpaid wages. See Me. Rev. Stat. Ann. tit. 26, § § 621(2), 626-A, 663(10), 670 (West 1988 & Supp. 1998). Thus, an hourly worker who works more than 40 hours in a week, but is not paid by the State for those additional hours of work, may bring suit to recover unpaid wages. *Ibid.* The only issue, then, is what substantive law should control the amount of recovery—*i.e.*, the specific

hourly wage to which employees are entitled. Are employees entitled to recover time and a half, in accordance with federal law, or are they limited to straight time, as provided under state law?

The Supremacy Clause provides the answer. Where Congress acts within its powers, as it has here in establishing the FLSA overtime wage standards, the resulting federal law becomes the rule of decision in any suit asserting a claim for unpaid wages for overtime work. The state courts cannot choose to give effect to state causes of action for wages in which state law alone will be applied while barring such suits insofar as the plaintiff invokes controlling federal law.

B. The Eleventh Amendment, The Tenth Amendment, And Principles Of State Sovereignty Do Not Limit The Power Of Congress To Provide For Private Enforcement Of The FLSA In State Court

The State contends (Br. 17-40) that the Supremacy Clause is not implicated in this case, because Section 16(b) of the FLSA, 29 U.S.C. 216(b), violates principles of state sovereignty. In particular, it argues that the Eleventh Amendment, the Tenth Amendment, and sovereign immunity principles that predate the Constitution prevent Congress from using its power under the Commerce Clause to provide for a private cause of action against the State enforceable in state court.

1. The State's reliance on the Eleventh Amendment (Br. 31-37) is misplaced. By its terms, the Eleventh Amendment restricts only the "[j]udicial power of the United States." U.S. Const. Amend. XI. This Court has therefore repeatedly stated that the Amendment has no application in state court. *Hilton*, 502 U.S. at 204-205 ("[A]s we have stated on many occasions, 'the Eleventh Amendment does not apply in state courts.'") (citing cases).

In restricting the federal judicial power over the States, the Eleventh Amendment preserves a delicate balance between state and federal interests. Its purpose is to avert the "problems of federalism inherent in making one sovereign appear against its will in the courts of the other." *Employees of Dep't of Pub. Health & Welfare* v. *Department of Pub. Health & Welfare*, 411 U.S. 279, 293 (1973) (Marshall, J., concurring). See also *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 239-240 n.2 (1985) (approving Justice Marshall's concurring opinion). As the Supreme Judicial Court of Maine recognized in *Thiboutot* v. *State*, 405 A.2d 230, 235 (Me. 1979), aff'd on other grounds, 448 U.S. 1 (1980), "[a]djudicating federal claims against state governments in the state courts is likely to produce less friction in federal-state relations" than requiring a federal claim against the State to proceed in federal court. At the same time, because the Eleventh Amendment has no application in state court, it does not operate to prevent vindication of federal law altogether.

The State contends (Br. 32-34) that this Court's Eleventh Amendment decisions have departed from the literal language of the Amendment and stand for the broader proposition that the Constitution protects States from suit in their own courts as well. That reading of this Court's Eleventh Amendment decisions is incorrect. The decisions upon which the State relies hold that, even though the literal terms of the Eleventh Amendment apply only to actions under the diversity grants of jurisdiction in Article III, the Eleventh Amendment reflects the broader constitutional principle that sovereign immunity limits all grants of authority under Article III. *E.g.*, *Seminole Tribe* v. *Florida*, 517 U.S. 44, 64 (1996) ("[T]he Eleventh Amendment reflects the fundamental principle of sovereign immunity [that] limits the grant of judicial authority in Art.

III.") (internal quotation marks and citation omitted); *Principality of Monaco* v. *Mississippi*, 292 U.S. 313, 326 (1934); *Hans* v. *Louisiana*, 134 U.S. 1, 15 (1890). Those holdings are grounded in the basic purpose of the Eleventh Amendment—to prevent Article III courts from exercising jurisdiction over suits against unconsenting States. *Seminole Tribe*, 517 U.S. at 64-65. Rather than seeking an interpretation of the Eleventh Amendment that would reflect its underlying purpose as a limitation on the Article III jurisdiction of the federal courts, the State in this case seeks a complete rewriting of the Amendment to serve an entirely different purpose—to free the State from the constraints of a provision of federal law altogether. Neither this Court's decisions nor the constitutional text supports such an interpretation of the Eleventh Amendment.

2. The State's reliance (Br. 18, 32) on the Tenth Amendment is similarly misplaced. The Tenth Amendment simply states that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. The Amendment therefore confirms that the powers conferred on the federal government are limited and that the States retain a significant measure of sovereign authority, but it "offers no guidance about where the frontier between state and federal power lies." *Garcia*, 469 U.S. at 550; see also *New York* v. *United States*, 505 U.S. 144, 156-157 (1992).

3. In arguing that Congress lacks any Article I power to provide for private actions against States in state court, the State ultimately relies (Br. 14-21) not on any constitutional text, but on the common-law principle in effect prior to the adoption of the Constitution that a State could not be sued in its own courts without

its consent. In the State's view (Br. 22-31), the Constitution did not alter that settled principle.

The State's argument ignores the foundation for the common-law rule that States could not be sued in their own courts. As the Court explained in *Kawananakoa* v. *Polyblank*, 205 U.S. 349, 353 (1907), a State's immunity from suit in its own courts was based "on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." The Court reiterated that explanation in *Nevada* v. *Hall*, 440 U.S. 410, 416 (1979), confirming that a State's immunity from suit in its own courts rested on the straightforward proposition that the "right to govern * * * necessarily encompass[es] the right to determine what suits may be brought in the sovereign's own courts."

Given that "logical and practical" basis for the common-law immunity of a State in its own courts, it is entirely understandable why that common-law principle is superseded and rendered inapposite when Article I of the Constitution gives Congress power to impose a legal obligation on the States and when the Supremacy Clause renders that legal obligation the law of the State itself and "the law on which the right depends." Since the immunity is simply a corollary of the right to determine the substantive law, *Nevada* v. *Hall*, 440 U.S. at 415, the loss of the exclusive right to determine the substantive law that operates within the State eliminates the "logical and practical ground" on which the common-law right to an absolute immunity from suit was predicated. Thus, when Congress has power under Article I to impose a substantive obligation on the States, Congress likewise has authority to determine the extent to which that obligation may be enforced against a State in its courts. And the Supremacy Clause imposes a corresponding duty on state courts of

competent jurisdiction to enforce that law "as if the act had emanated from its own legislature." *Howlett*, 496 U.S. at 371. See U.S. Br. 29-30.

In light of the above, the State's repeated assertion that the Constitution did not give Congress authority to abrogate a State's preexisting immunity from suit in its own courts misconstrues the nature of that immunity. Prior to the adoption of the Constitution, States never had an immunity from suit in their courts that was independent of their sovereign authority to determine the substantive law that applied within their boundaries. The State is attempting in this case to assert an immunity from suit in its own courts that never existed—one that is completely divorced from its sovereign authority to determine the controlling substantive law. Because that kind of immunity "never existed" prior to the adoption of the Constitution, the question whether the Constitution gave Congress authority to abrogate it "cannot arise." *U.S. Term Limits, Inc.* v. *Thornton*, 514 U.S. 779, 802 (1995).

The relevant inquiry therefore is not whether the Constitution gave Congress authority to abrogate a State's preexisting immunity from suit in its own courts. Instead, the relevant inquiry is whether the Constitution gave Congress authority to prevent the States from extending their preexisting immunity from suit in their own courts to a new and distinct class of cases—those in which Congress has substantive authority under the Constitution to impose a legal obligation on the States and has determined that private enforcement of that obligation in state court is appropriate. For the reasons we have discussed, the answer to that question is that Article I together with the Supremacy Clause gave Congress such power. In that more limited sense, the Constitution gave Congress

authority to abrogate a State's immunity from suit in its own courts.

Those principles are controlling here. Since Congress had authority under the Commerce Clause to require a state employer to pay its employees in accordance with the requirements of the FLSA, it also had authority under the Commerce Clause to provide for the enforcement of that obligation in state courts of competent jurisdiction. And since Maine courts are fully competent to enforce the FLSA against the State, they have an obligation under the Supremacy Clause to do so.

4. In support of its contrary view, the State cites (Br. 19-20) statements made by the Framers of the Constitution. In particular, the State relies on Alexander Hamilton's statement that "[i]t is inherent in the nature of sovereignty, not to be amenable to the suit of an individual *without its consent*," *The Federalist No. 81*, at 548 (Alexander Hamilton) (Jacob E. Cooke ed., 1961), John Marshall's statement that "[i]t is not rational to suppose that the sovereign power should be dragged before a court," 3 Jonathan Elliot, *Debates on the Adoption of the Federal Constitution* 555 (2d ed. 1888), and James Madison's statement that "[i]t is not in the power of individuals to call any state into court," *id.* at 533. According to the State (Br. 21), those statements all proceed from the premise that a State cannot be sued in any court without its consent.

The statements relied upon by the State, however, must be understood in the context in which they were made. As the Court explained in *Nevada* v. *Hall*, those statements all "focused on the scope of the judicial power of the United States authorized by Art. III." 440 U.S. at 419. None of the statements addressed the very different question whether Congress would have authority to subject a State to suit in state court in those

circumstances in which the Constitution gave Congress power to impose a substantive obligation on the States.

Indeed, the State's reading of the Framers' statements conflicts with the actual holding and rationale of *Nevada* v. *Hall*. There, the Court held that the Constitution does not protect a State from a private action filed in the courts of another State. An essential component of the Court's reasoning was that the Framers' broad statements could not be understood as incorporating into the federal Constitution the principle that States cannot be sued in any court without their consent. 440 U.S. at 418-421. Instead, the Court concluded that the statements reflected only an understanding of the scope of Article III. *Ibid.* The Framers' statements therefore do not answer the question presented here.

5. The State also attributes significance to the absence of any evidence that the Framers anticipated that Congress would have power to subject States to suits in their own courts. Br. 21. The absence of such evidence is unsurprising. As this Court has explained, "the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role" even if the Framers could not have foreseen the exact form the exercise of those powers would take in the future. *New York* v. *United States*, 505 U.S. at 157.

The Framers would not likely have anticipated that Congress would use its authority under the Commerce Clause to impose an obligation on the States to pay their workers in accordance with federal wage standards in the first place. Nor would the Framers likely have anticipated that States would provide for suit against themselves in state court on a variety of claims, including claims against the State for wages withheld. The question presented here is—given that Congress *has* constitutionally imposed a substantive obligation on

the States to pay their workers in accordance with federal wage standards, and a resulting "liability" to those workers, see 29 U.S.C. 216(a), and given that state courts now *are* fully competent to entertain such claims—does Congress have authority to provide state employees with a right to sue in state court to recover the wages that a State owes under federal law? While there is no evidence that the Framers anticipated such a suit, "the powers conferred upon the Federal Government by the Constitution" permit such an exercise of power. *New York* v. *United States*, 505 U.S. at 157.

For substantially the same reasons, the State errs (Br. 29-30) in finding significance in the absence of any early legislation subjecting States to suit in their own courts. The early Congresses had a fundamentally different conception than did later Congresses of the appropriate federal role. The critical point is that such legislation falls within the scope of the Commerce Clause and the Supremacy Clause, and nothing in the Constitution limits such an exercise.

C. This Court's Decisions Support Congress's Authority To Provide For Private Enforcement Of The FLSA In State Court

1. a. In arguing that Congress lacks power to subject States to suit in their own courts for violations of controlling federal law, the State also fails to come to grips with this Court's decision in *Hilton*. In that case, the Court held that a private action for damages under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*, could be enforced against a state employer in state court, even though such a suit could not be brought in federal court. As we explain in our opening brief (Br. 32-33), that holding was necessarily premised on the view that a State's immunity from suit in its own courts does not have the same constitutional footing as a State's immunity from suit in federal court.

The State contends (Br. 37-39) that *Hilton* is not persuasive authority because the State in that case did not argue that Congress lacked authority to abrogate the State's immunity from suit, and because the Court relied on principles of stare decisis in holding that the FELA creates a cause of action against state employers enforceable in state court. But as we point out in our opening brief (Br. 32), the State in that case did argue that principles of sovereign immunity inherent in the Constitution required Congress to clearly manifest its intent to subject States to suit in state court, which it did not do. Significantly, the Court squarely rejected that contention on the ground that the clear statement rule is a component of the Eleventh Amendment and the Eleventh Amendment does not apply in state court. 502 U.S. at 204-205. The Court only then proceeded to resolve on stare decisis grounds what it viewed as a pure question of statutory construction. *Id.* at 205. If, as the State contends, a State's immunity from suit in its own courts stands on the same constitutional footing as its immunity from suit in federal court, the Court in *Hilton* could not have resolved the case the way it did. Instead of resolving the question as a matter of statutory construction, the Court would have been required to apply a constitutionally based clear statement rule, and to decide the case in favor of the State.

The State offers no response to that analysis of *Hilton*. Nor does the State offer any explanation for the Court's concluding statement in *Hilton*, 502 U.S. at 207, that when "a federal statute does impose liability upon the States, the Supremacy Clause makes that statute the law in every State, fully enforceable in state court."

b. The State also fails to reconcile its argument with *Reich* v. *Collins*, 513 U.S. 106 (1994). That decision holds that the State is required to provide a tax refund

remedy when it collects taxes in violation of federal law, "the sovereign immunity States traditionally enjoy in their own courts notwithstanding." *Id.* at 109-110. The State's view (Br. 40) that the principle that emerges from *Reich* is that a State has an absolute right to assert sovereign immunity in its own courts, except in a small subset of tax cases, has no constitutional or logical foundation. The Supremacy Clause does not operate only in a small class of tax cases. When, as here, Congress has acted constitutionally in imposing a legal obligation on the States, and has provided for enforcement of that obligation in state court, the Supremacy Clause requires a state court of competent jurisdiction to entertain the action, "the sovereign immunity States traditionally enjoy in their own courts notwithstanding." *Reich*, 513 U.S. at 109-110.

c. The State's analysis is also substantially undercut by this Court's decision in *Atascadero*. In *Atascadero*, this Court held that a federal Rehabilitation Act claim could not be brought in federal court against a State, because Congress had not abrogated the State's Eleventh Amendment immunity from suit in federal court. In dissent, Justice Brennan argued that the Court's holding would exempt States from compliance with the Rehabilitation Act. Justice Brennan assumed, as does the State here, that if Congress could not abrogate the State's Eleventh Amendment immunity from suit in federal court, then the State would also be immune from suit in state court. In the majority opinion, this Court squarely addressed Justice Brennan's concern and rejected it as "wholly misconceiv[ing] our federal system." 473 U.S. at 239-240 n.2. This Court explained that *state courts* would still enforce the Act against the States, and that the Eleventh Amendment was *not* a grant of "general immunity of the States from private suit . . . but merely [affected] the susceptibility of the

States to suit before *federal tribunals*." *Id.* at 240 n.2 (internal quotation marks and citation omitted). The Court added that "[i]t denigrates the judges who serve on the state courts to suggest that they will not enforce the supreme law of the land." *Ibid.*

2. The State relies (Br. 34-36) on a number of earlier cases that contain broad dicta to the effect that a State may not be sued in any court without its consent. Those cases, however, either involve actions brought in federal court, *Cunningham* v. *Macon & Brunswick R.R.*, 109 U.S. 446(1883) *Board of Liquidation* v. *McComb*, 92 U.S. 531 (1875); *Hans* v. *Louisiana*, 134 U.S. 1 (1890), or they involve suits brought in state court to enforce state-law claims. *Briscoe* v. *Bank of Kentucky*, 36 U.S. (11 Pet.) 257 (1838); *Beers* v. *Arkansas*, 61 U.S. (20 How.) 527 (1858); *Railroad Co.* v. *Tennessee*, 101 U.S. 337 (1879). None of those cases holds that Congress lacks authority to provide for an action against a State in its own courts in those circumstances in which Congress has authority to impose a substantive obligation on the States. Moreover, the broad dicta in those cases cannot be reconciled with this Court's more recent decisions, such as *Nevada* v. *Hall* and *Reich*.

3. The State also relies (Br. 9-10) on dicta in *Seminole Tribe*, 517 U.S. at 71 n.14, and *Hess* v. *Port Authority Trans-Hudson Corp.*, 513 U.S. 30, 39 (1994). *Seminole Tribe*, however, holds only that Congress does not have authority under the Commerce Clause to provide for a suit against an unconsenting State in federal court. In a footnote relied upon by the State, the Court stated that "this Court is empowered to review a question of federal law arising from a state-court decision where a State has consented to suit." 517 U.S. at 71 n.14. But that statement was unnecessary to the

holding, and, in any event, leaves unanswered the question whether the Court would also have power to review a state-court decision when a State has not consented to suit.

In *Hess*, this Court addressed whether a bi-state railway owned by the Port Authority of New York and New Jersey possessed immunity under the Eleventh Amendment from a FELA suit in federal court. The Court held that the Port Authority was an entity discrete from the two States and thus that it did not possess Eleventh Amendment immunity. 513 U.S. at 35-53. In the course of its opinion, the Court observed that "the Eleventh Amendment largely shields States from suit in federal court without their consent, leaving parties with claims against a State to present them, if the State permits, in the State's own tribunals." *Id.* at 39. At the same time, however, the Court noted without any disapproval the district court's observation in that case that, under *Hilton*, the FELA claim there could have been brought by the private party against the Port Authority in state court because the Eleventh Amendment does not apply in state court. *Id.* at 34-35. The State therefore reads too much into the statement upon which it relies. More fundamentally, since the Court was not presented with the question whether Congress has power to provide for a private action against a State in state court in those circumstances in which it has the power to impose a substantive obligation on the States, the decision in *Hess* is inapposite here.

4. The State also seeks support for its position in *Printz* v. *United States*, 521 U.S. 898 (1997), and *New York* v. *United States*, *supra*. Br. 23-25. The State's reliance on those cases is puzzling. Those cases hold that Congress may not commandeer state legislatures or executive branch officials to enact or administer a fed-

eral regulatory program. In both cases, the Court was careful to distinguish and reaffirm the duty of state-court judges to enforce federal law under the Supremacy Clause. *Printz*, 521 U.S. at 928 ("*Testa* stands for the proposition that state courts cannot refuse to apply federal law—a conclusion mandated by the terms of the Supremacy Clause."); *New York*, 505 U.S. at 178-179 ("Federal statutes enforceable in state courts do, in a sense, direct state judges to enforce them, but this sort of federal 'direction' of state judges is mandated by the text of the Supremacy Clause.").

5. The State also argues (Br. 27) that acceptance of our argument would render *Ex parte Young*, 209 U.S. 123 (1908), largely superfluous, since, in the State's view, that decision may only apply when there is no adequate remedy in state court. As a general matter, however, a plaintiff's right to sue in federal court under *Ex parte Young* does not depend on whether there is an adequate remedy in state court, but on whether the plaintiff is seeking prospective relief to end an ongoing violation of federal law. *Green* v. *Mansour*, 474 U.S. 64, 68 (1985); *Quern* v. *Jordan*, 440 U.S. 332, 346-349 (1979). The lead opinion in *Idaho* v. *Coeur D'Alene Tribe*, 521 U.S. 261, 270 (1997), relied on by the State, suggested that the absence of an available remedy in state law could sometimes be an important factor in deciding whether an *Ex parte Young* suit should be permitted in federal court. But a majority of the Court rejected that view. *Id.* at 291-295 (O'Connor, J., joined by Scalia, J. and Thomas, J., concurring in the judgment); *id.* at 312-317 (Souter, J., joined by Stevens, J., Ginsburg, J., and Breyer, J., dissenting). And even the lead opinion made clear that the availability of a state-court remedy would not preclude plaintiff from seeking relief in federal court under *Ex parte Young* to prevent an ongoing violation of the Fourteenth Amendment, *id.* at 279-280,

and in other circumstances, *id.* at 277-278. The State's contention that acceptance of our position would make *Ex parte Young* largely superfluous is therefore incorrect.

D. Enforcement Of The FLSA In State Court Is Necessary To Ensure Effective Enforcement Of Federal Law

The State argues (Br. 11-12) that its refusal to enforce the FLSA in state court against state employers would not frustrate the operation of the Act. In particular, it argues that the United States could ensure compliance with the FLSA by suing the State for injunctive relief and seeking back wages and liquidated damages on behalf of the state employees in federal court. Effective enforcement of the Act, however, has always been substantially dependent on extensive private litigation in federal and state court. See *Employees of Dep't of Pub. Health & Welfare*, 411 U.S. at 297 n.12 (Marshall, J., concurring) ("It is obviously unrealistic to expect [federal] Government enforcement [of the FLSA] to be sufficient."). In 1996, the Act covered some 79 million employees. Yet the Department of Labor has only 930 Wage and Hour investigators for the entire country, one investigator for every 85,000 covered employees. The State's argument also entirely ignores the personal nature of the right that Congress has conferred. A person's right to the wages that he or she earned, and that Congress deemed necessary for economic well-being, should not be made to depend on the discretion of federal officials who must necessarily focus their limited resources on areas in which noncompliance is most acute.

The State's alternative argument (Br. 12-13), that Congress can ensure effective enforcement by authorizing private suits for prospective relief, is equally unpersuasive. Prospective relief fails to provide employees

with the earned wages to which they are entitled by federal law. For many employees, including those who have changed employers or who have been laid off, prospective relief is no relief at all. See U.S. Br. 38-39. And without the possibility of retrospective relief, a state employer, unlike any other employer, could wait to be sued before conforming its pay practices to the requirements of the Act. In any event, Congress has determined that private damage actions are necessary to ensure effective enforcement of the Act, and since that judgment is reasonable, it may not be second-guessed.

Finally, the State's argument, if accepted here, would have consequences far beyond the present case, allowing States to defeat federal rights whenever suit in federal court is barred by the Eleventh Amendment. The State's argument would apply even when a statute provides for no government enforcement action and even when damages are the only effective form of relief. In *Hilton*, for example, the Court noted that "to confer immunity from state-court suit would strip all FELA and Jones Act protection from workers employed by the States." 502 U.S. at 203. If the State's argument in this case were to be accepted, the right of state workers under the FELA and the Jones Act to compensation for work-related injuries would be rendered illusory. This Court has never permitted a State to insulate itself from the effective operation of a valid federal law, and it should not do so here.

* * * * *

The judgment of the Maine Supreme Judicial Court should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

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